

General Information Letter: No withholding of Illinois income tax is required from compensation paid to truck driver whose compensation is exempt from Illinois income tax under Public Law 101-322.

June 21, 1999

Dear:

This is in response to your letter dated May 7, 1999. Given the nature of your inquiry and the information you provide, I am responding with a General Information Letter. This is not to be taken as a statement of Department policy or as a binding ruling by the Department. As general information gathered in response to your particular questions, however, I hope that it is helpful to you. See 86 Ill. Adm. Code 1200.120(b) and (c).

In your letter you have stated the following:

Taxpayer hereby requests clarification on Illinois withholding for Indiana residents. Taxpayer has certain employees who are truck drivers who reside in Indiana but work out of our trucking terminal located in Illinois. Taxpayer was advised that the taxpayer must withhold Illinois withholding for these truck drivers. There is a federal ruling (Public Law 101-322) that provides that employees of motor carriers performing regularly assigned duties in more than one state can only be subject to the income tax laws of his state of residence.

In view of the above, how does the truck driver get credit for Illinois withholding on his Indiana income tax return? I assume the truck driver will need to file an Illinois income tax return, but since it is my understanding that Illinois should not tax any income of the Indiana truck driver since Public Law 101-322 prohibits taxation by Illinois.

Response

The Illinois Income Tax Act (IITA), Section 203(a)(2)(N) declares that Illinois base income is not to include income exempt from taxation by the State due to statutes of the United States. Income tax regulations at 86 Ill. Admin. Code 100.7010(b)(2) recognize that this State is not permitted to subject certain employees of common carriers to income taxes or withholding. Those employees are defined specifically at 100.2590(a)(2) to include drivers who work for motor carriers and who regularly perform duties in 2 or more states. In those cases, only the state that is the residence of the employee may impose an income tax and require withholding.

It is clear from the foregoing that Indiana residents who drive trucks for your company and perform their duties in at least two states should not be subject to Illinois withholding. You say that your terminal is located in Illinois, so it appears that they must drive through at least one other state in their regularly assigned duties in order to be exempt from withholding.

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As stated above, this is a general information letter which does not constitute a statement of policy that either applies, interprets or prescribes tax law. It is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Sincerely,

Kent R. Steinkamp
Staff Attorney -- Income Tax